IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 592 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHOBHANA C KANSARA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 592 of 1992

MR IS SUPEHIA for Petitioner.

Mr. MA Bukhari, AGP for Respondents.

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 30/01/2003

ORAL JUDGEMENT

The present petition is filed challenging the G.R. GAD dated 7-11-90 [Annexure 'G' to the petition] whereby the petitioner was upgraded from Assistant Librarian to Librarian and pay-protection was given to her. However, the petitioner was not granted any benefit with regard to the work she has done as Librarian during the period from 30th August 1980 to 31st May 1983. The

petitioner has also challenged the G.R. dated 31.5.1983 [Annexure 'D' to the petition] whereby she was downgraded from the post of Librarian to the post of Assistant Librarian and prayed for reliefs to the effect that the respondent-authorities be directed to treat the entire service period from 1-6-83 to 1-2-91 as the period of service rendered as Librarian and pay the difference of pay and allowances to the petitioner.

2. The petitioner has stated in the petition that she was appointed initially on temporary basis upto 31st December 1980 by Order dated 27.8.1980 till the candidate from the Public Service Commission was made available. The said period was extended thereafter from time to time upto 31-5-1983. During this period, the petitioner had preferred Appeal No. 148 of 1982 before the Gujarat Civil Service Tribunal at Gandhinagar under an apprehension that she was likely to be discharged from service from 30.4.1982. The said appeal was decided on 7th March 1983 and the Tribunal had directed the respondent authorities that she should be continued till the Government refuses to sanction the post and her appointment for the fixed period is only for the purpose of administrative convenience.

3. The petitioner has further stated that in February 1983 certain books were transferred to Gujarat Sahitya Academy and the post of Librarian was created and hence an application was given by the petitioner on 31.5.83 giving her consent that she was prepared to work as Assistant Librarian in the pay-scale of Rs. 330-560 and this was to be treated as the fresh appointment of the petitioner. Accordingly an order was passed on 18.6.83 appointing the petitioner as Assistant Librarian purely on temporary basis for the period from 1.6.83 to 30.9.83. The petitioner was continued on the said post till 2nd February 1991.

4. The petitioner has further submitted that the respondent-authorities have passed the G.R. dated 2.2.1991 absorbing the petitioner in the post of Librarian and protected the pay of Assistant Librarian in the post of Librarian having higher pay-scale of Rs. 1400-2300 without allowing the pay-fixation in the higher scale. It is this G.R. which is under challenge in the present petition.

5. Heard Mr. Supehia, ld. advocate appearing for the petitioner and Mr. Bukhari, ld. AGP appearing for the respondent authorities. Mr. Supehia has strongly urged that once it is accepted that the petitioner is

qualified to work as Librarian and the petitioner's initial appointment was that of Librarian and since she has worked as Librarian during the period from 30-8-80 to 31.5.83 the petitioner should be given the difference of pay and allowances due to her. He has further submitted that since the petitioner was not given the said benefit while absorbing her in the post of Librarian. The G.R. dated 2.2.1991 to this extent is unlawful and illegal and the same is required to be quashed and set aside. He has further submitted that the petitioner who was discharging her duties as Assistant Librarian was discharging the same duties of Librarian and as such she was entitled for the pay-scale of that post on the principle of equal pay for equal work as the post was created in 1989 but the same was downgraded on the plea that there was reduction in the number of books though it has no nexus with the number of books while sanctioning the post of Librarian. Mr. Supehia has therefore contended that the relief claimed in the petition should be granted by this Court.

6. Mr. Bukhari, the ld. AGP appearing for the respondent authorities, on the other hand, submitted that the petitioner was appointed as Assistant Librarian with effect from 1-6-1983 and she has worked as Assistant Librarian till February 1991. The said post was upgraded on 2-2-1991 and from that day onwards all benefits were given to the petitioner. The petitioner's earlier appointment as Librarian made in August 1980 was a temporary appointment and the same was terminated in May 1983 and hence that period was not to be taken into account while granting other service benefits to the petitioner. Mr. Bukhari has further submitted that the petitioner herself had given her consent to work as Assistant Librarian in the pay-scale of Rs. 330-560 and in this view of the matter, it is not open for the petitioner to claim the benefits with effect from 30th August 1983. Mr. Bukhari has therefore submitted that there is no merit in the petition and the same is required to be dismissed.

7. I have heard both the learned advocates appearing for the respective parties and I have also gone through the relevant papers and documents attached with this petition. It is revealed from the documents that the petitioner has worked as Librarian from 30th August 1980 to 31st May 1983. However, the said appointment had come to an end on 31st May 1983. Thereafter at the request of the petitioner, a fresh appointment order was issued appointing her as Assistant Librarian. The petitioner has not raised any grievance at the time when she was downgraded from the post of Librarian to the post of

Assistant Librarian by fresh appointment order. The petitioner has worked for more than about 8 years and the said post was upgraded in February 1991. The petitioner has raised this grievance only after 1991. Once having agreed to particular proposal and enjoyed the benefits thereunder, it is not open for the petitioner to challenge the said action at the belated stage. Vide G.R. dated 7th February 1991, the respondent authorities have thought it fit to grant the pay protection to the petitioner. However, other benefits which were claimed in the petition were not granted to the petitioner on the ground that the earlier appointment of Assistant Librarian has come to an end and under the fresh appointment order of Assistant Librarian she has worked for more than 8 years. If the said G.R. is made operative from 1988, it would create certain anomalies and give rise to other litigations. Taking overall view of the matter, and having considered the facts and circumstances of the case, I am of the view that the relief claimed by the petitioner in this petition is not required to be granted while exercising the writ jurisdiction under Art. 226/227 of the Constitution of India. The petition therefore does not deserve any interference and hence it is rejected accordingly. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]